

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1029

AN ACT

AMENDING SECTIONS 28-1382 AND 28-3319, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 28-1382, Arizona Revised Statutes, is amended to
3 read:

4 28-1382. Driving or actual physical control while under the
5 extreme influence of intoxicating liquor; trial by
6 jury; sentencing; classification

7 A. It is unlawful for a person to drive or be in actual physical
8 control of a vehicle in this state if the person has an alcohol concentration
9 of 0.15 or more within two hours of driving or being in actual physical
10 control of the vehicle and the alcohol concentration results from alcohol
11 consumed either before or while driving or being in actual physical control
12 of the vehicle.

13 B. A person who is convicted of a violation of this section is guilty
14 of driving or being in actual physical control of a vehicle while under the
15 extreme influence of intoxicating liquor.

16 C. At the arraignment, the court shall inform the defendant that the
17 defendant may request a trial by jury and that the request, if made, shall be
18 granted.

19 D. A person who is convicted of a violation of this section:
20 1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced
21 to serve not less than thirty consecutive days in jail and is not eligible
22 for probation or suspension of execution of sentence unless the entire
23 sentence is served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE
24 SHALL BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECUTIVE DAYS IN JAIL
25 AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE
26 UNLESS THE ENTIRE SENTENCE IS SERVED.

27 2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT
28 THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A
29 FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. The fine prescribed in this
30 paragraph and any assessments, restitution and incarceration costs shall be
31 paid before the assessment prescribed in paragraph 3 of this subsection.

32 3. Shall pay an additional assessment of two hundred fifty dollars. If
33 the conviction occurred in the superior court or a justice court, the court
34 shall transmit the monies received pursuant to this paragraph to the county
35 treasurer. If the conviction occurred in a municipal court, the court shall
36 transmit the monies received pursuant to this paragraph to the city
37 treasurer. The city or county treasurer shall transmit the monies received
38 to the state treasurer. The state treasurer shall deposit the monies received
39 in the driving under the influence abatement fund established by
40 section 28-1304.

41 4. May be ordered by a court to perform community restitution.

1 5. Shall be required by the department, on receipt of the report of
2 conviction, to equip any motor vehicle the person operates with a certified
3 ignition interlock device pursuant to section 28-3319. In addition, the
4 court may order the person to equip any motor vehicle the person operates
5 with a certified ignition interlock device for more than twelve months
6 beginning on the date of reinstatement of the person's driving privilege
7 following a suspension or revocation or on the date of the department's
8 receipt of the report of conviction, whichever occurs later. The person who
9 operates a motor vehicle with a certified ignition interlock device under
10 this paragraph shall comply with article 5 of this chapter.

11 6. Shall pay an additional assessment of one thousand dollars to be
12 deposited by the state treasurer in the prison construction and operations
13 fund established by section 41-1651. This assessment is not subject to any
14 surcharge. If the conviction occurred in the superior court or a justice
15 court, the court shall transmit the assessed monies to the county
16 treasurer. If the conviction occurred in a municipal court, the court shall
17 transmit the assessed monies to the city treasurer. The city or county
18 treasurer shall transmit the monies received to the state treasurer.

19 7. Shall pay an additional assessment of one thousand dollars to be
20 deposited by the state treasurer in the state general fund. This assessment
21 is not subject to any surcharge. If the conviction occurred in the superior
22 court or a justice court, the court shall transmit the assessed monies to the
23 county treasurer. If the conviction occurred in a municipal court, the court
24 shall transmit the assessed monies to the city treasurer. The city or county
25 treasurer shall transmit the monies received to the state treasurer.

26 E. Notwithstanding subsection D, paragraph 1 of this section, at the
27 time of sentencing **IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN**
28 **0.20**, the judge may suspend all but ten days of the sentence if the person
29 completes a court ordered alcohol or other drug screening, education or
30 treatment program. If the person fails to complete the court ordered alcohol
31 or other drug screening, education or treatment program and has not been
32 placed on probation, the court shall issue an order to show cause to the
33 defendant as to why the remaining jail sentence should not be served.

34 F. If within a period of eighty-four months a person is convicted of a
35 second violation of this section or is convicted of a violation of this
36 section and has previously been convicted of a violation of section 28-1381
37 or 28-1383 or an act in another jurisdiction that if committed in this state
38 would be a violation of this section or section 28-1381 or 28-1383, the
39 person:

40 1. **EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH**, shall be sentenced
41 to serve not less than one hundred twenty days in jail, sixty days of which
42 shall be served consecutively, and is not eligible for probation or
43 suspension of execution of sentence unless the entire sentence has been
44 served. **A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE**
45 **SENTENCED TO SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF**

1 WHICH SHALL BE SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR
2 SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN
3 SERVED.

4 2. Shall pay a fine of not less than five hundred dollars, EXCEPT THAT
5 A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A FINE OF
6 NOT LESS THAN ONE THOUSAND DOLLARS. The fine prescribed in this paragraph
7 and any assessments, restitution and incarceration costs shall be paid before
8 the assessment prescribed in paragraph 3 of this subsection.

9 3. Shall pay an additional assessment of two hundred fifty
10 dollars. If the conviction occurred in the superior court or a justice
11 court, the court shall transmit the monies received pursuant to this
12 paragraph to the county treasurer. If the conviction occurred in a municipal
13 court, the court shall transmit the monies received pursuant to this
14 paragraph to the city treasurer. The city or county treasurer shall transmit
15 the monies received to the state treasurer. The state treasurer shall
16 deposit the monies received in the driving under the influence abatement fund
17 established by section 28-1304.

18 4. Shall be ordered by a court to perform at least thirty hours of
19 community restitution.

20 5. Shall have the person's driving privilege revoked for at least one
21 year. The court shall report the conviction to the department. On receipt
22 of the report, the department shall revoke the person's driving privilege and
23 shall require the person to equip any motor vehicle the person operates with
24 a certified ignition interlock device pursuant to section 28-3319. In
25 addition, the court may order the person to equip any motor vehicle the
26 person operates with a certified ignition interlock device for more than
27 twelve months beginning on the date of reinstatement of the person's driving
28 privilege following a suspension or revocation or on the date of the
29 department's receipt of the report of conviction, whichever is later. The
30 person who operates a motor vehicle with a certified ignition interlock
31 device under this paragraph shall comply with article 5 of this chapter.

32 6. Shall pay an additional assessment of one thousand two hundred
33 fifty dollars to be deposited by the state treasurer in the prison
34 construction and operations fund established by section 41-1651. This
35 assessment is not subject to any surcharge. If the conviction occurred in
36 the superior court or a justice court, the court shall transmit the assessed
37 monies to the county treasurer. If the conviction occurred in a municipal
38 court, the court shall transmit the assessed monies to the city treasurer.
39 The city or county treasurer shall transmit the monies received to the state
40 treasurer.

41 7. Shall pay an additional assessment of one thousand two hundred
42 fifty dollars to be deposited by the state treasurer in the state general
43 fund. This assessment is not subject to any surcharge. If the conviction
44 occurred in the superior court or a justice court, the court shall transmit
45 the assessed monies to the county treasurer. If the conviction occurred in a

1 municipal court, the court shall transmit the assessed monies to the city
2 treasurer. The city or county treasurer shall transmit the monies received
3 to the state treasurer.

4 G. Notwithstanding subsection F, paragraph 1 of this section, at the
5 time of sentencing, **IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN**
6 **0.20**, the judge may suspend all but sixty days of the sentence if the person
7 completes a court ordered alcohol or other drug screening, education or
8 treatment program. If the person fails to complete the court ordered alcohol
9 or other drug screening, education or treatment program and has not been
10 placed on probation, the court shall issue an order to show cause as to why
11 the remaining jail sentence should not be served.

12 H. In applying the eighty-four month provision of subsection F of this
13 section, the dates of the commission of the offense shall be the determining
14 factor, irrespective of the sequence in which the offenses were committed.

15 I. A second violation for which a conviction occurs as provided in
16 this section shall not include a conviction for an offense arising out of the
17 same series of acts.

18 J. A person who is convicted of a violation of this section is guilty
19 of a class 1 misdemeanor.

20 Sec. 2. Section 28-3319, Arizona Revised Statutes, is amended to read:
21 **28-3319. Action after license suspension, revocation or denial**
22 **for driving under the influence or refusal of test;**
23 **ignition interlock device requirement; definition**

24 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
25 or 28-3322, the license of a driver or the driving privilege of a nonresident
26 is suspended or revoked, the department shall not terminate the suspension or
27 revocation or issue a special ignition interlock restricted driver license,
28 if applicable, pursuant to chapter 4, article 3.1 of this title until the
29 person provides proof of financial responsibility pursuant to chapter 9,
30 article 3 of this title.

31 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
32 or 28-3322, an unlicensed resident is denied a license or permit to operate a
33 motor vehicle, the department shall not issue a license or permit until the
34 person provides proof of financial responsibility pursuant to chapter 9,
35 article 3 of this title.

36 C. If a person whose license or driving privilege is suspended or
37 revoked pursuant to section 28-1321, 28-1381, 28-1382 or 28-1383 is ordered,
38 pursuant to section 28-1381, 28-1382 or 28-1383, to attend alcohol or other
39 drug screening, education or treatment, the department shall not either:

40 1. Terminate the suspension or issue a special ignition interlock
41 restricted driver license, if applicable, pursuant to chapter 4, article 3.1
42 of this title until the person provides proof from the treatment facility
43 that the person has completed or is participating satisfactorily in alcohol
44 or other drug screening, education or treatment.

1 2. Issue a new license or a special ignition interlock restricted
2 driver license, if applicable, pursuant to chapter 4, article 3.1 of this
3 title to operate a motor vehicle after the revocation until the person
4 provides proof from the facility that the person has completed the court
5 ordered program.

6 D. On receipt of a report of conviction from a court, the department
7 shall require any motor vehicle the convicted person operates to be equipped
8 with a functioning certified ignition interlock device and the convicted
9 person to meet the requirements prescribed in section 28-1461 for twelve
10 months if any of the following applies:

11 1. The department determines that within a period of eighty-four
12 months a person is convicted of a second or subsequent violation of section
13 28-1381 with a prior conviction of a violation of section 28-1381 or 28-1382
14 or an act in another jurisdiction that if committed in this state would be a
15 violation of section 28-1381 or 28-1382.

16 2. The ~~conviction is for a violation of~~ PERSON IS SENTENCED PURSUANT
17 TO section 28-1382, SUBSECTION D, EXCEPT THAT IF THE PERSON'S ALCOHOL
18 CONCENTRATION IS 0.20 OR MORE, THE CERTIFIED IGNITION INTERLOCK DEVICE IS
19 REQUIRED FOR EIGHTEEN MONTHS.

20 3. THE PERSON IS SENTENCED PURSUANT TO SECTION 28-1382, SUBSECTION F,
21 EXCEPT THAT IF THE PERSON'S ALCOHOL CONCENTRATION IS 0.20 OR MORE, THE
22 CERTIFIED IGNITION INTERLOCK DEVICE IS REQUIRED FOR TWENTY-FOUR MONTHS.

23 3. 4. The conviction is for a violation of section 28-1383,
24 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b).

25 E. The ~~twelve month period~~ REQUIREMENT prescribed in subsection D of
26 this section begins on the date of reinstatement of the person's driving
27 privilege following a suspension or revocation or on the date of the
28 department's receipt of the report of conviction, whichever occurs later.

29 F. A person who is required to equip a motor vehicle with a certified
30 ignition interlock device pursuant to subsection D of this section shall
31 comply with chapter 4, article 5 of this title.

32 G. For the purposes of this section, "certified ignition interlock
33 device" has the same meaning prescribed in section 28-1301.